

By: Representatives Smith (35th), Howell

To: Ways and Means

HOUSE BILL NO. 1736

1 AN ACT TO BE KNOWN AS THE "PRIVATE FUNDING FOR EDUCATIONAL
2 ASSISTANCE ACT"; TO DECLARE CERTAIN LEGISLATIVE FINDINGS AND TO
3 DEFINE CERTAIN TERMS USED IN THE ACT; TO PROVIDE FOR AN INCOME TAX
4 CREDIT FOR TAXPAYERS WHO MAKE CONTRIBUTIONS TO NONPROFIT
5 EDUCATIONAL ASSISTANCE ORGANIZATIONS; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 **SECTION 1.** This act shall be known and may be cited as the
8 "Private Funding for Educational Assistance Act."

9 **SECTION 2.** The Legislature finds and declares the following:

10 (a) The individual development of young people is
11 critical to their future success and that of this state.

12 (b) Each child is unique and learns differently from
13 other children, and many children are likely to benefit from
14 expanded educational opportunities.

15 (c) The dropout rate concerns this state, and it is in
16 the interest of all citizens of this state to take steps to reduce
17 the dropout rate and to assist those who have dropped out.

18 (d) A credit against state taxes for contributions to
19 nonprofit educational assistance organizations authorized by this
20 act will expand the educational opportunities available to
21 children of families that have limited financial resources,
22 especially at-risk students, and will increase the academic
23 achievements of the children of this state.

24 (e) This state has recognized the value of choice in
25 education and acknowledges that privately funded scholarships can
26 and do serve the public interest.



27 (f) The funding in this act is in accordance with case
28 law and precedent and is considered to be private, voluntary,
29 nongovernmental funding.

30 (g) The state goal to provide more resources toward
31 education requires creative and innovative solutions that can
32 involve the private sector.

33 (h) With respect to a nonpublic school, nothing in this
34 act shall be construed to give any governmental entity authority
35 to regulate, control, supervise or otherwise be involved in:

36 (i) The form, manner or content of instruction,
37 ministry, teaching or curriculum offered by the nonpublic school;

38 (ii) The ability of the nonpublic school to select
39 and supervise qualified personnel and otherwise control the terms
40 of employment, including the right to employ only those
41 individuals who share the religious views of the school;

42 (iii) The internal discipline, self-governance and
43 autonomy of the nonpublic school; or

44 (iv) The religious environment of the nonpublic
45 school, such as symbols, art, icons and scripture.

46 (i) Individuals who not only pay their own taxes for
47 the support of the public schools, but also relieve the state and
48 its school districts of the necessity of assessing, collecting and
49 expending additional taxes by making voluntary contributions to
50 school tuition organizations should receive at least a partial
51 credit against their income taxes on account of those
52 contributions.

53 (j) The providing of assistance by a nonprofit
54 educational assistance organization shall not be construed to be a
55 public appropriation, or the providing of public financing
56 assistance to any school.

57 **SECTION 3.** The following words and phrases, when used in
58 this act, have the meanings ascribed in this section unless the
59 context clearly indicates otherwise:



60 (a) "Nonprofit educational assistance organization"

61 means a charitable organization that:

62 (i) Is located in this state;

63 (ii) Is exempt from federal income taxes pursuant
64 to Section 501(c)(3) of the Internal Revenue Code of 1986, as
65 amended; and

66 (iii) Allocates its annual revenues for student
67 scholarships, educational assistance and marketing and
68 administrative expenses and meets the following conditions:

69 1. At least fifty percent (50%) of all
70 qualifying contributions the organization receives during any
71 given state fiscal year must be for the purpose of providing
72 scholarships to any qualifying student who attends a school, and
73 the organization must demonstrate a pattern of giving priority in
74 awarding scholarships to those students who demonstrate the
75 greatest need for the scholarships. Any qualifying contributions
76 not required to be allocated in accordance with this subparagraph
77 may be used to provide scholarships for nonqualifying students who
78 attend schools or may be used for the purposes set forth in
79 subparagraph 3;

80 2. The organization does not provide any
81 scholarship to a student for a single school year that exceeds
82 ninety percent (90%) of the state's share of the minimum education
83 program for all school districts divided by the average daily
84 attendance for all school districts in this state for the school
85 year in which the scholarship is awarded, except that the
86 organization may award scholarships to children with disabilities
87 in any amount that does not exceed two hundred percent (200%) of
88 the state's share of the minimum education program for all school
89 districts divided by the average daily attendance for all school
90 districts in this state for the school year in which the
91 scholarship is awarded, and except that scholarships may be
92 awarded in amounts in excess of the limitation if the increased



93 amount of a scholarship is offset by a reduction in the monetary
94 amount of the scholarships provided by the organization to
95 nonqualifying students; and

96 3. An organization may allocate up to fifty
97 percent (50%) of any qualifying contributions it receives during
98 any given state fiscal year which are not required to be allocated
99 under subparagraph 1 to directly assist any student who attends a
100 public school in defraying the costs of private instructional
101 assistance or public school scholarships, including any related
102 private educational supplies and materials and transportation to
103 and from any school to the extent that such transportation is not
104 paid for by a school district or the state, offsetting student
105 fees, after-school programs, scholarship assistance for dropouts
106 and grants for public school programs and for marketing and
107 administrative expenses.

108 The term "nonprofit educational assistance organization" does
109 not include an organization that only provides scholarships to
110 students of a particular school.

111 (b) "Qualifying contribution" includes a donation of
112 money but does not include a payment for tuition, activity fees or
113 other educational expenses of the taxpayer making the payment, a
114 spouse or dependent of the taxpayer or any individual student
115 identified by name by the taxpayer as the intended beneficiary of
116 the payment.

117 (c) "Qualifying student" means a student who was
118 counted as a pupil in average daily attendance during the previous
119 state fiscal year for purposes of state per pupil funding
120 obligations or who has received a scholarship from the nonprofit
121 educational assistance organization during any previous state
122 fiscal year. The term includes all kindergarten students. The
123 term does not include a student who is counted in average daily
124 attendance for the state fiscal year in which the nonprofit
125 educational assistance organization is providing a scholarship.



126 (d) "School" means a public or nonpublic elementary or
127 secondary school located within this state at which a student may
128 fulfill the requirements of the Mississippi Compulsory School
129 Attendance Law (Section 37-13-91).

130 **SECTION 4.** (1) For any tax year commencing on or after
131 January 1, 2002, there shall be allowed to any taxpayer that makes
132 a qualifying contribution to a nonprofit educational assistance
133 organization a credit against the tax imposed by this chapter in
134 an amount equal to fifty percent (50%) of the aggregate amount of
135 the taxpayer's contributions made during the income tax year for
136 which the credit is claimed.

137 (2) A taxpayer is entitled to the credit allowed under this
138 section only if:

139 (a) The contribution is made by the taxpayer under the
140 restriction that it shall be used only for the purposes authorized
141 by this act; and

142 (b) the taxpayer does not designate a specific student
143 as the beneficiary of the contribution.

144 (3) A tax credit under this section may be carried forward
145 for a period of five (5) years.

146 **SECTION 5.** A nonprofit educational assistance organization
147 that receives a contribution shall provide a receipt to the
148 taxpayer making the contribution. The receipt must include the
149 name of the nonprofit educational assistance organization, the
150 name of the taxpayer, the amount of the contribution and any
151 additional information required by the State Tax Commission.

152 **SECTION 6.** The freedom of religion of all persons is
153 inviolate, and this act may not be construed to authorize
154 governmental involvement in or entanglement with the religious
155 instruction or other operations of a nonpublic school.

156 **SECTION 7.** The State Tax Commission may promulgate rules and
157 regulations to administer and enforce this act.



158 **SECTION 8.** The provisions of this act are severable, except
159 that if any provision of Section 3(a)(iii)1 is found to be
160 unconstitutional, then Section 3(a)(iii)3 shall be null and void.

161 **SECTION 9.** Sections 1 through 8 of this act shall be
162 codified as separate consecutive sections in Chapter 7, Title 27,
163 Mississippi Code of 1972.

164 **SECTION 10.** Nothing in this act shall affect or defeat any
165 claim, assessment, appeal, suit, right or cause of action for
166 taxes due or accrued under the income tax laws before the date on
167 which this act becomes effective, whether such claims,
168 assessments, appeals, suits or actions have been begun before the
169 date on which this act becomes effective or are begun thereafter;
170 and the provisions of the income tax laws are expressly continued
171 in full force, effect and operation for the purpose of the
172 assessment, collection and enrollment of liens for any taxes due
173 or accrued and the execution of any warrant under such laws before
174 the date on which this act becomes effective, and for the
175 imposition of any penalties, forfeitures or claims for failure to
176 comply with such laws.

177 **SECTION 11.** This act shall take effect and be in force from
178 and after January 1, 2002.

